

**MINUTES
of the
SECOND MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**October 1, 2013
Adelante Development Center
3900 Osuna Road NE
Albuquerque**

The second meeting of the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee (LHHS) was called to order on October 1, 2013 by Senator Nancy Rodriguez, chair, at 9:35 a.m. at Adelante Development Center in Albuquerque.

Present

Sen. Nancy Rodriguez, Chair
Rep. Doreen Y. Gallegos, Vice Chair
Sen. Craig W. Brandt
Sen. Linda M. Lopez

Absent

Rep. Nora Espinoza
Rep. James Roger Madalena

Advisory Members

Rep. Miguel P. Garcia
Rep. Edward C. Sandoval
Rep. Elizabeth "Liz" Thomson

Guest Legislator

Sen. Gerald Ortiz y Pino

Staff

Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Shawn Mathis, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Nancy Ellis, LCS
Branden Ibarra, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, October 1

Welcome

Senator Rodriguez welcomed everyone and asked legislators and staff to introduce themselves.

Mike Kivitz, president and chief executive officer of Adelante Development Center, Inc., said his nonprofit organization provides individualized support services and employment for more than 900 New Mexicans with mental, physical and developmental disabilities. The center was able to purchase the building for \$48.00 per square foot, and U.S. Senator Pete Domenici and U.S. Representative Heather Wilson were able to help for a federal appropriation for remodeling. Adelante has other ventures, such as a document destruction and imaging company, and runs a web site called BackInUse.com, which makes available to the disabled repaired and reconditioned durable medical equipment free of charge. Mr. Kivitz said Adelante's current total budget is \$23 million, which is down due to sequestration and recent changes in Medicaid waivers. Since the advent of managed care, Adelante no longer provides any behavioral health services.

Los Lunas Community Program for the Developmentally Disabled

Jon Hellebust, administrator of the Los Lunas Community Program, accompanied by Lynn Gallagher, deputy director of the Department of Health (DOH), described the community-based program that operates at the old Los Lunas training center, which was closed in the mid-1990s. All residences in the program are leased facilities, and consumers leave the residences for a minimum of six hours a day to receive services. Mr. Hellebust said that the program has oversight of the old training center, where there are various types of therapy offered, swimming pools, a foster grandparents program, a fish hatchery, a bookmobile and a local police substation. In another section of the old training center, there is an intermediate care facility run by the Corrections Department for men who are developmentally disabled sexual or violent offenders. Los Lunas is a statewide crisis center for short- or long-term placement, he said.

Currently, there are 65 individuals being served at Los Lunas year-round, Mr. Hellebust said, and this number is expected to rise to 70 in the next year. These are primarily high-need medical and behavioral health clients. Residential consumers need 24-hour-a-day staffing in houses that serve one to four persons, Mr. Hellebust said. Services are provided for these and 65 to 70 other consumers who may need only day services or supported employment. Half of the population at Los Lunas are *Jackson* class members, he said, and their programs are reviewed by *Jackson* auditors on a regular basis. The program's annual operating budget is \$16 million (nearly half from Medicaid through the developmental disabilities (DD) waiver), Mr. Hellebust said, and it is currently able to recoup about 90 percent of its billable budget. The program is seeking to become nationally certified by the Commission on Accreditation of Rehabilitation Facilities, which will enhance its reputation and attract more qualified staff and additional providers.

The dental clinic at Los Lunas is home to the only board-certified special care dentist currently operating in New Mexico, Mr. Hellebust said. The clinic serves 900 to 1,100 patients annually and is operated on a fee-for-service basis through Medicaid, with an additional appropriation of \$150,000 from the legislature. There is a total clinic staff of five, including two hygienists and two dental assistants. There are 30 community dentists who serve the disabled through Medicaid, he said, but the low rate of reimbursement has caused some to leave the program. Currently, there are two vacancies at the clinic, where the work is very challenging, and sometimes dangerous, in the provision of services to highly compromised clients. Mr. Hellebust said the clinic is hoping to be able to offer higher pay grades for more successful recruiting. Right now, there is a year's wait to see Dr. Ray Lyons.

DD Issues

Cathy Stevenson, director of the Developmental Disabilities Supports Division (DDSD), DOH, provided a handout for subcommittee members in which she answered questions brought up at the LHHS meeting in September in Socorro. In addition, she gave another presentation that described the time lines, benefits and services of the newly designed DD waiver and the Supports Intensity Scale (SIS) tool used to assess consumers into groups of services based on need. After going over the numbers (4,000 enrolled in the DD waiver and 6,300 on the waiting list), Ms. Stevenson said there are many points throughout the individual assessment for the redesigned waiver at which consumers can access their right to a hearing. The DOH will pay for a professional interpreter, if one is needed, and there are team members who can help speak for consumers who are unable to speak for themselves. The system is responsive, Ms. Stevenson said, both to the individual and to the need for policy changes and adjustments based on public and provider comment. Listed on the last page of her presentation are DOH goals for the future, including moving 325 additional people off the waiting list and into waiver services for fiscal year (FY) 2013, and moving 400 additional people in FY 2014. Ms. Stevenson promised subcommittee members that she will provide an in-depth report on the problem of reversion to the general fund of funds that were intended by the legislature to take individuals off the waiting list and onto the waiver. The subject of these annual reversions has been contentious at previous meetings, and members have stated that they are looking for a clear explanation of the problem and ideas on how to fix it.

Questions/Concerns

A subcommittee member told Ms. Stevenson that he found the use of the word "rich" inappropriate in describing an array of services on page 6 of one of the handouts. "These are services that people need", the member stated. Ms. Stevenson assured him that the word "rich" could be struck.

In response to a question about qualifications of those on the waiting list for the DD waiver, Jennifer Thorne, who works with intake and eligibility for the DDSD, described the four status levels: 1) *start*: in the process of submitting paperwork, does not yet qualify for the program; 2) *pending*: children under age eight with a related condition rather than developmental disability, who do not yet have evidence of dysfunction in three or more life

areas; the department invites applicants to send evidence of functional limitations when the child reaches the age of eight (usually available through special education testing by that age), and the application will be revisited at that time while preserving the original application date; 3) *complete*: eligible, but must demonstrate financial eligibility criteria upon allocation; and 4) *on hold*: when the applicant is not yet ready but wants to keep a place in line. There are approximately 1,200 new applications each fiscal year, Ms. Thorne said, and of those, only 300 have sufficient documentation to be confirmed and placed in complete status. There are "related conditions", such as cerebral palsy and autism before the age of 22, that can be considered. A clinical team determines eligibility, she said. There is a second review, and this can be appealed through a fair hearing.

A member wanted to know who works with these individuals to determine services. There is an interdisciplinary team that comes up with a plan, looks at the service package and selects services needed for that year, Ms. Stevenson said. Case managers are independent companies under contract with the state; they are not state employees. The member also asked if there is any incentive for a case manager to approve or disapprove of services. Ms. Stevenson said that case managers do not have any incentive one way or the other, and the consumer can always ask for a different case manager. The member asked how Medicaid hearing officers are chosen. Hearing officers are in the Human Services Department (HSD), Ms. Stevenson said, and come from a multitude of backgrounds and are completely independent. They are not part of the Medicaid division.

Some consumers are not spending money because there are not enough providers, observed another member. Cutting the budget means there are no providers, and this is a vicious circle, he said. Ms. Stevenson agreed that therapists are scarce, especially in the outlying areas. The DDS tries to track instances when people want therapy and cannot get it, she said. The DDS offers an incentive rate for therapists and a good rate for therapy extenders.

Several subcommittee members continued to question Ms. Stevenson about why there is such a discrepancy between increased legislative funding to get people off the waiting list and into the waiver and the lack of desired results. Another member inquired about the capacity of infrastructure and resources if the DDS were able to keep all of the money instead of reverting it. Ms. Stevenson agreed that, with current allocations, the staff is maxed out. A dramatic increase of people being brought into the system would strain the DDS's resources and the health care work force. Perhaps more funds should be allocated for administration, the member said. Ms. Stevenson said that the DDS is trying to be a better manager of that money. The DDS has been assuming an annual attrition of 30 consumers, she said, when in fact, this year, 84 people left the program. "We were not managing our attrition rate appropriately", she said.

Senator Rodriguez told Ms. Stevenson that the subcommittee wants her to be on the agenda again to present the reversion information in depth, and Ms. Stevenson agreed, saying she wants to be able to give more meaningful answers to these questions. She gave members her

personal guarantee and pledged that more people on the waiting list will be brought into the DD waiver program.

Senate Memorial (SM) 20 Update

Doris Husted, director of public policy for The Arc of New Mexico, is co-chair of the task force formed in response to SM 20, passed during the 2013 legislative session, which asks for DD waiver wait times of no more than three years. Ms. Husted described the work of the task force of about 30 individuals, who met for a full day every other week for eight weeks. The group included people on the wait list, families, providers, DOH employees, agencies, The ARC, Mi Via Advisory Committee members and others. It was very broad-based, she said. They looked at infrastructure, pre-allocation issues and the number of state employees needed to process new consumers. One thousand two hundred new consumers would need to be allocated to the DD waiver for each of the three years, and the task force concluded that this would not be possible. It would double the size of the current waiver, and the state and provider infrastructure could not be grown this quickly. The three-year plan would require \$35 million from the general fund and an additional \$84 to \$85 million in federal matching funds to accomplish this, the group estimated.

According to Ms. Thorne, who also served on the SM 20 Task Force, interim recommendations included the following: 1) look at how state general-funded DD services might be improved by stretching them out over a longer period; 2) look at the Mia Via Self-Directed Waiver program (Mi Via) to make it more appealing, as it does provide more flexibility for consumers in choosing providers; and 3) expand the state infrastructure to put more people into DD waiver services and to monitor them. To address the reversion of funds intended to move consumers off the waiting list and onto the waiver, the group suggested the possibility of a pilot project using state general funds in an amount smaller than the state Medicaid match to provide more flexibility and less paperwork without the stringent Medicaid requirements. The dollars that now revert could go to annual contracts outside of Medicaid, the task force suggested. The involvement of the Legislative Finance Committee (LFC) and the Department of Finance and Administration (DFA) would be essential in helping to outline a way to do this.

One task force suggestion was to revisit allocations across the state, starting with consumers who have the oldest date of application. Currently, 15 percent are given priority to anyone with a caregiver who is 65 years of age or older, and it was decided to leave this distribution alone for now. Another suggestion was to conduct an update of contact information. During the recession and hiring freeze, the department sent out mailers only to the top 150 on the list. This year, a mailing to the entire list will be resumed, and the task force emphasized that follow-up phone calls are critical to this process. Growing the state infrastructure may take as much as \$85 million in additional funding over a three-year period, Ms. Thorne said.

A member referred to the base budgets listed on page 8 of Ms. Stevenson's presentation and asked if there had been any changes over the past year in the dollar amounts. The member asked where the changes from the SIS come in and whether the presenters can show the dollar

amounts before and after the SIS. Ms. Stevenson responded that the figures listed in the chart on page 8 are the SIS base budgets. She said she could get the old numbers to compare. Three years ago, everyone's budget was reduced by eight percent, she said, but there have not been any changes since then. The DDS is aware that it needs to build provider capacity, Ms. Stevenson said. The member advised the task force to be sure to include increases in provider rates in its financial projections.

The SM 20 Task Force is preparing a final report, which that should be delivered in one month.

Role of Molina Healthcare

Julie Weinberg, director of the Medical Assistance Division of the HSD, provided several charts (see handouts), one on DD waiver expenditures over the past five years and another on a breakdown of payments for DD waiver services from January through July 2013. She then introduced Patti Kehoe, president of Molina Healthcare of New Mexico (Molina), the third-party assessor (TPA) for Medicaid in New Mexico. Molina determines medical necessity and does utilization review for the DD waiver, the Mi Via, the HIV waiver and several other programs, Ms. Kehoe said. Its arrangement with the state is through competitive bidding.

The TPA hires nurses, social workers, clerks and data entry specialists from DD waiver providers, Ms. Kehoe explained, and it makes a determination and uploads into the Omnicaid payment system. It is held by the state to a turnaround time of 10 days. Budgets also must be turned around in 10 days, Ms. Kehoe said. The TPA monitors accounts on a daily basis, and it monitors *Jackson* class consumers, specifically. If the numbers served on the DD waiver were to increase, Molina would have to hire more staff to handle its contract with the state, she said.

Questions/Concerns

Delay in payment to providers. A member expressed concern about hearing numerous complaints that it is taking too long for Molina to approve budgets, so providers are not getting paid. Ms. Kehoe admitted that in June and July, Molina had issues, and the turnaround time was 24 days. To address this, the time frame of the budget was extended. The backlog has been reduced and the turnaround time is 12 days, she said. Some documentation was not correct, so the process is being streamlined. Any request for information will slow down the review process. In response to a question about rates, Ms. Kehoe explained that Molina does not set rates; rather, it does a review of medical necessity. Its staff enters information and authorizes services over a period of time. So when a claim comes in from a provider, and it has been authorized by Molina, Omnicaid can process and pay that claim. The department changed the review process, Ms. Weinberg said, in defense of Molina's slow-down in the review process. Another member asked why Molina is needed after the plan has been entered in the system. Ms. Weinberg responded that even after the plan is in the system, Molina makes sure the service is medically necessary and looks for over- and under-utilization. If there is a change in services, a C-waiver must be filed in order to pay the provider.

What is Omnicaid? Ms. Kehoe explained that this is a brand name for the Medicaid Management Information System, which is software for a main frame computer that is required by federal law. This is run by Xerox. Molina is also the fiscal agent in processing all encounters from managed care organizations.

How is a service plan determined? A team made up of service providers, such as nurses and direct support staff, comes up with a plan for the consumer that is within the rules of Medicaid and within the provisions of the waiver. There are seven therapists on staff as reviewers, and a physical therapist reviews any budget that includes physical therapy. A new prior authorization process involves review of the request by a therapist within the relevant discipline. A subcommittee member asked if therapists are paid to go to team meetings. Ms. Stevenson said that a therapy plan code should allow some time that would cover this. The member disagreed. A therapist cannot give away this many hours and still make a living, the member observed.

How is Molina paid? Molina is paid on a case-rate, one-payment-per-year-per-recipient basis, no matter how many times it touches the case, Ms. Weinberg said. The rate is \$500 per case, even if the plan changes. If the team and case managers say that the service plan needs to be changed, documentation is completed and sent to Molina, then it is uploaded into Omnicaid. The revision goes to Molina with a 10-day turnaround. If the revision is approved, services should not be interrupted, Ms. Weinberg said. One member noted that on page 8 of Ms. Stevenson's presentation, family living cost for Group C is \$60,000 a year, but the member knows that families do not get this. They get \$2,150 per month. The member is troubled by the fact that those providing the services get paid less than those who administer the services. For FY 2014, Molina's total contract with the state is \$7 million for all services, not just the DD waiver. Oversight of Molina is from corrective action plans that are built into its contract with the HSD, Ms. Weinberg said, and these can lead to financial sanctions.

Early Intervention Services from Birth to Age Three

Anna Otero Hatanaka, executive director of the Association of Developmental Disabilities Community Providers (ADDCP), made a presentation to the subcommittee (see handout) asking for \$6.9 million to implement the recommendations of the DOH 2003 independent study of reimbursement rates for the early intervention programs providing services for the Family Infant Toddler (FIT) program.

The FIT program provides a statewide comprehensive system of free early intervention services for children from birth to age three who have developmental delays, disabilities and serious illnesses. It serves 13,000 children, Ms. Otero Hatanaka said. Intervention is more effective and less costly when it is provided early in life, and a cost-benefit analysis shows that for every \$1.00 invested in quality early childhood programs, a savings of \$7.00 to \$17.00 in benefits by the time the child becomes an adult is realized. The program's focus is on therapeutic strategies for the parents of these children.

FIT early intervention services are provided through a network of 33 community provider agencies that serve families in all counties and in Native American communities in New Mexico, Ms. Otero Hatanaka said. The program has continued to provide services at the same rates that were deemed insufficient in the 2003 study and, in some cases, at rates that have been lowered, she said. The FIT program is an entitlement program; it is not based on financial need; and there is no waiting list. The FIT program has been in a deficit situation, and the DOH has asked for supplemental deficiency funding and for more funding in the future. A subcommittee member asked about the source of funding, and Ms. Otero Hatanaka said there is part C of the federal Individuals with Disabilities Act Funding, state general funds and private funds from insurance companies. A rate increase for providers would have to come from the general fund to cover the non-Medicaid and Medicaid state portions.

Minutes Approved

A motion was made, seconded and passed unanimously to approve the minutes of the July 8, 2013 meeting.

Public Comment

Robert Kegel, parent of a DD waiver adult child, presented subcommittee members with a 25-page review of the "Recent History and Perspective of the New Mexico DD Waiver" (see handout), in which he vigorously disputes the process by which the waiver was changed, the figures that the HSD and the DOH continue to provide to the public, the reliability of the Burns & Associates rate study and the use of the SIS to categorize consumers and assign service packages. Mr. Kegel says cuts to the DD waiver do not take inflation into account and that projections assume that providers will be paid the same amount throughout the years. He asked that the HSD reveal the amount of money that was paid to Human Services Research Institute and Burns & Associates and that the HSD publish on its web site the algorithm that is being used in the SIS. Ms. Stevenson said she will address Mr. Kegel's points in writing.

Mr. Kivitz said that the five percent and eight percent cuts since 2010 have caused a great deal of pain for providers and for his organization and has resulted in a \$1.2 million reduction in Adelante's budget. Mr. Kivitz does not believe that rates that resulted from the Burns & Associates study are "revenue neutral". Core services have been cut, supported employment has been cut and, as a result, Adelante will have to cut mid-level managers, insurance coverage and direct service staff and reduce retirement plans. For the first time, Mr. Kivitz said, Adelante does not have the infrastructure to help persons on the DD waiver waiting list. Problems with Molina are short term, he said. His organization is looking at other non-waiver options to keep the agency alive.

Ms. Otero Hatanaka agreed with Mr. Kivitz that the new rates are not budget neutral. She presented subcommittee members with a position statement (see handout) from her organization regarding the *Jackson* litigation. Increasingly, many providers have come to feel that the *Jackson* lawsuit represents their last significant leverage on the DD service system. *Jackson* class members are not part of the redesigned DD waiver and are held harmless from any reduction in

services due to their SIS scores, the position states. Operating dual systems of services is a practice many feel is discriminatory. ADDCP members do not want the lawsuit to end until there is assurance that both *Jackson* class and non-*Jackson* DD waiver participants will receive the same services under the same standards, at rates adequate to meet all individuals' needs and requirements.

Ernestine Morales has a daughter with microcephaly who is now 45 years old, and Ms. Morales struggled with care for many years until she found out about the DD waiver, which was a blessing, she said. On the waiver, her daughter began to improve. Then, in 2010, changes began to happen, with five percent cuts across the board. Her daughter was part of the pilot program for the SIS, but it took over a year to get the results. Her daughter got a D, but family members thought it should have been an E, but they were afraid to retest. On March 26, 2012, caregivers met to discuss the changes to the DD waiver program, and that was the start of the New Mexico Providers Association. Ms. Morales urged subcommittee members to listen to caregivers, because home living costs the state half of what it costs for consumers to live in group homes.

Ted Romero, who has one son at Los Lunas and another on the DD waiver, said he has had difficulty with incident reports not being provided to him as a parent. He and his wife have had problems with translators, and during their son's SIS assessment, the interpreter left. Mr. Romero has brought this to Ms. Stevenson's attention, and she said services will continue under the previous budget until this is sorted out.

Evangeline Zamora is chief executive officer of Life Quest, Inc., the only provider in Grant, Luna, Catron and Hidalgo counties. Life Quest has provided services for 40 years but it has had to eliminate some services in supported living because the cost of providing the services exceeded the payments. Life Quest was able to provide these services fully until the recession and the rate reductions. Now, it cannot put together its budgets because the SIS assessments have been trickling in, she said. Life Quest has a lot of community support, but it has had to make big changes. Early intervention services are difficult for rural areas, Ms. Zamora said, and it is hard to find therapists.

Laurie Ross-Brennan, who is a speech and language pathologist and auditory integration specialist, said that several hundred of the SIS assessments were not done accurately, and the state has had to pay twice. The SIS is using Canadians who are not trained professionals to decide who gets clinical services. Her agency had a budget that was held up for months, and it has lost eight full-time speech pathologists who went to work for the schools. The HSD has cut services, Ms. Ross-Brennan said.

Cyndy Mantagna, an occupational therapist who works in Las Cruces and in Sierra County and sees children in their homes as part of the FIT program, said she is begging for a rate increase for FIT providers. There has been no increase for more than a decade, she said, and

therapists are going to work in public schools, where they get vacations, retirement and automatic raises.

Sylvia Washington of Tresco Tots in Las Cruces has a letter of support for the rate increase for FIT providers. She met with Michael Yune regarding preschool for all and told him of concern about three-year-olds who do not qualify for services at schools. Mr. Yune said he was hopeful that preschool for all could provide a place for them, she said.

Kathleen Cates is chief executive officer of Life Roots, which has been providing early intervention services in New Mexico since 1958. Ms. Cates said she appreciates how inquisitive and smart the subcommittee members have been in learning about how all of these programs work. The \$4 million shortfall in FIT early intervention was because funds were used to shore up another program, Ms. Cates said. This year, contracts have been reduced. Creative approaches are needed to develop other sources of revenue, now that supported employment pays only \$200 a month. Adelante is one of the largest agencies in New Mexico, Ms. Cates noted, and only the largest agencies can tread water long enough to wait things out. One hour of service requires three hours for travel, paperwork and billing.

Jim Ogle, president, New Mexico National Alliance on Mental Illness (NAMI), said he wanted to change the subject to treatment guardians out of the New Mexico Disabilities Planning Council. NAMI's Sue Wentzel has been part of the treatment guardian program for a long time, he said, and NAMI has had a contract with the planning council since 1995. NAMI won its last request for proposals (RFP) in 2011. This year, NAMI was asked to rebid. NAMI was the only bidder, but it did not get the contract. Another RFP went out, and two other organizations got the contract, which was supposed to start July 1. The point Mr. Ogle wanted to make is that there were no treatment guardians in the state for about two months. One bidder got northern New Mexico, the other southern New Mexico. After one month, the northern New Mexico bidder pulled out. NAMI was asked to take over the Las Vegas contract, and the original documents for this were received from the council on September 16. Nothing has been signed or is in place, so this means there have been no treatment guardians for Las Vegas for quite some time. NAMI will not take action on the new contract until it recovers payment for the last two months of last year's contract; it is still owed \$31,000. NAMI is an all-volunteer organization, Mr. Ogle said, and it is working off reserves because it has not been paid.

Ruby Ann Esquibel, LFC analyst, said that she has been reporting on treatment guardians not getting paid. The contracts must be bid because they are over \$50,000. The program is limping along and in pieces, she said, and RFPs were never completed, so contracts were not taken care of. There also has been a staffing problem at the agency, with loss of staff, and a loaner financial analyst is being used, Ms. Esquibel said. The head of the agency is on administrative leave. The LFC has been speaking to the DFA, and there will be a hearing later this month before the LFC to find out more about the situation.

The meeting was adjourned at 5:15 p.m.